IN THE

Supreme Court of the United States

October Term, 1956

No. 1108

WILLIAM S. GIRARD, *Petitioner*

v.

CHARLES E. WILSON, ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

CHARLES E. WILSON, Secretary of Defense; JOHN FOSTER DULLES, Secretary of State; WILBUR M. BRUCKER, Secretary of the Army; GENERAL MAXWELL D. TAYLOR, Head, Joint Chiefs of Staff; MAJOR GENERAL W. H. MAGLIN, Provost Marshall General, United States Army; GENERAL LYMAN LEMNITZER, Commanding General, Far East Command, United States Army, *Respondents*

PETITION FOR WRIT OF CERTIORARI, BEFORE JUDGMENT, TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Earl Warren, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, Petitioner respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

Petitioner, a soldier in the United States Army, is currently held in custody in Japan by United States Army officers at the instance of the executive branch of the United States Government for the purpose of his being turned over to Japanese authorities for trial in a Japanese court for an act which the Commanding General of Girard's division certified and which the United States Attorney stipulated at the hearing was done in the performance of official duty.

On June 18, 1957, the United States District Court (Judge Joseph C. McGarraghy) filed an Opinion containing findings of fact and conclusions of law. An Order was entered thereon—only part of which was appealed from by the Petitioner to the United States Court of Appeals for the District of Columbia Circuit. The entire Order has been appealed from by the Respondents. Both appeals are now pending in the United States Court of Appeals for the District of Columbia Circuit. This application is for a Writ of Certiorari before judgment.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 1254(1), Title 28, U.S. Code.

QUESTIONS PRESENTED

The questions on appeal by Petitioner may be stated to be:

1. Is a person to be denied a Writ of Habeas Corpus although his detention has been found to be unlawful merely because he may possibly again be arrested and detained for other reasons or for a different purpose, and is declaratory or injunctive relief alone adequate and proper in such circumstances?

2. Is a person in our military service who is unlawfully detained by the military authorities to be denied relief by habeas corpus merely because upon release from confinement or detention he must continue to serve for the balance of his enlistment in the Armed Forces.

3. Other questions presented in the appeal by the Respondents involve the constitutionality and legality of the "Administrative Agreement", "Protocol", "Minutes of Protocol", and "Agreed Views" (all executed without the consent of the United States Senate) pursuant to which documents it was sought to deliver the Petitioner to the Japanese courts for trial; the constitutionality and legality of the attempted application of the provisions of said documents to the facts in this case by the executive branch of the United States Government; the power of the executive to make a political decision to waive away rights of a United States citizen and the authority of the United States Courts to judicially determine the propriety, legality and constitutionality of such executive action.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The questions presented upon the appeal by the Petitioner as well as the questions presented upon the appeal by the Respondents are of great importance and have not but should be settled by this Honorable Court.

CONCLUSIONS

This Honorable Court should, 1. Order Respondents to file response to this Petition within a reasonable time. 2. Grant the Writ of Certiorari. 3. Permit each side adequate and reasonable time for study and brieting of the various questions involved. 4. Because of the shortness of time, permit the Petitioner

to file in this Honorable Court copies of the mimeographed "Memorandum In Support Of Petition For Writ Of Habeas Corpus" which was filed in the United States District Court for the District of Columbia. 5. Affirm the Order of the United States District Court for the District of Columbia and modify same to the extent of directing the issuance of the Writ of Habeas Corpus.

WHEREFORE, Petitioner prays that a Writ of Certiorari issue under seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia Circuit commanding said Court to certify and send to this Honorable Court a full and complete transcript of the record and of the proceedings had in this case to the end that the Order insofar as appealed from by the Petitioner be reviewed and determined by this Honorable Court as provided for by the statutes of the United States; modification of the Order of the District Court to the extent of directing that the Writ of Habeas Corpus issue; and for such other, further, and equitable relief as this Honorable Court may deem just and proper.

Respectfully submitted,

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